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ATTORNEYS FOR THE PETITIONING CREDITORS
AND THE AD HOC GROUP OF VITRO NOTEHOLDERS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	)	Chapter 11 Cases (Involuntary)
VITRO ASSET CORP., et al.,	)	Case No. 10-47470-rfn-11
Debtors.[1]	)	**Jointly Administered**

THE PETITIONING CREDITORS' LIMITED OBJECTION TO EMERGENCY
MOTION BY ALLEGED DEBTORS TO AMEND SCHEDULING ORDER

TO THE HONORABLE RUSSELL F. NELMS, UNITED STATES BANKRUPTCY JUDGE:

Knighthead Master Fund, L.P., Brookville Horizons Fund., L.P., Davidson Kempner Distressed Opportunities Fund L.P., and Lord Abbett Bond-Debenture Fund, Inc. (collectively the "Petitioning Creditors" and, with the Debtors, the "Parties"), as creditors and parties in interest in the above-captioned chapter 11 cases (the "Cases"), file this limited objection (the "Objection") to the Debtors' Emergency Motion to Amend Scheduling Order (the "Motion").

[1] The Debtors are Vitro Asset Corp., Vitro Chemicals, Fibers & Mining, LLC, Vitro America, LLC, Troper Services, Inc., Vitro Packaging, LLC, VVP Holdings, LLC, Amsilco Holdings, Inc., B.B.O. Holdings, Inc., Binswanger Glass Co., Crisa Corp., VVP Finance Corp., VVP Auto Glass, Inc., V-MX Holdings, LLC, Super Sky Products, Inc., and Super Sky International, Inc.

For the reasons set forth below, the Petitioning Creditors respectfully request the Motion be denied.

PRELIMINARY STATEMENT

1. The Petitioning Creditors have significant concerns that the Debtors are seeking the relief requested in the Motion not because such relief is necessary, but because the Debtors have much to gain—and nothing to lose—from a delay in these proceedings. Until an order for relief is entered, the Debtors enjoy the protections of the automatic stay under title 11 of the United States Code (the "Bankruptcy Code") without having to comply with any of the fiduciary obligations that would be imposed if an order for relief is entered. In contrast, the Petitioning Creditors and other Vitro Noteholders continue to wait for the payments they are owed under the Vitro Notes, payments that have not been made in two years.

2. Irrespective of the questions about the Debtors' motives, their Motion fails to establish "good cause" for the requested delay. First, the February 10 and 11 hearing dates were fixed by this Court, by agreement of the Parties, in December 2010. Second, the burdens of production in these Cases are not onerous or unreasonable. Indeed, the Debtors are represented by two of the largest law firms in the world. Further, the Petitioning Creditors have already granted the Debtors one extension to the original production deadline, and the Debtors agreed to the timelines for production with complete knowledge of the nature and extent of their production obligations.

3. Additionally, a delay in these Cases is contrary to the long-term interests of all Parties because it simply prolongs the inevitable accounting for the Debtors' liabilities. Because the Debtors are liable as guarantors for debts owed in respect of the Vitro Notes, both the Debtors and their creditors have an urgent need for an order for relief being entered as

quickly as possible. Further delay will only prejudice the Petitioning Creditors. Accordingly, the Petitioning Creditors respectfully request that the Motion be denied.

STATEMENT OF FACTS

4. In mid-December of last year, this Court scheduled a hearing on whether an order for relief should be entered in these Cases for February 10 and 11, 2011 (the "Hearing Date"). The Debtors did not object to the Hearing Date, and the Parties then used the Hearing Date as a baseline for negotiating the schedule for discovery and other pre-Hearing Date matters. By December 23, the Parties had agreed in substance to a schedule, and a week later this Court entered an order memorializing that agreement (the "Agreed Scheduling Order" or the "Order" [Dkt. No. 111]).

5. In accordance with the Agreed Scheduling Order, the Parties exchanged requests for production (the "Requests") on December 23, 2010, with a deadline for production set for January 12, 2011. In the two weeks after December 23, the Parties exchanged responses and objections to the Requests and met and conferred about the scope of discovery. By January 6, 2011, the Parties had agreed to search terms for all but a few Requests.

6. On or around January 5, 2011, two weeks after being served with the Petitioning Creditors' Requests, counsel for the Debtors advised the Petitioning Creditors that the Debtors had encountered a significant volume of Spanish documents when searching their custodians' files. Accordingly, the Parties agreed at that time that the Debtors would propose Spanish-language search terms for the Debtors' document collection. The Debtors, however, did not propose such terms for most of the Requests until nearly a week later on January 11, 2011.

7. While meeting and conferring, the Debtors expressed concerns that some of the search terms might produce an overly burdensome number of documents. The Petitioning

Creditors attempted to address those (hypothetical) concerns by offering to reconsider the search terms if they produced a burdensome number of documents. On at least one occasion, the Petitioning Creditors in fact agreed to modify search terms after the Debtors claimed the terms resulted in numerous false hits. At no time did the Petitioning Creditors refuse to accommodate a request from the Debtors to modify search terms that produced an unreasonable volume of materials.

8. On January 10, 2011, the Debtors requested an amendment to the Agreed Scheduling Order extending the deadline for document production to January 28, 2011. The Petitioning Creditors agreed to grant the Debtors' request for an extension; however, in order to avoid rescheduling the Hearing Date, the Petitioning Creditors proposed setting the deadline for document production two days earlier on January 26.

9. Using the new production date as a baseline, the Petitioning Creditors shifted the other dates in the schedule accordingly. The Parties agreed to eliminate the time that had been set aside for expert discovery and instead use that time for other matters, recognizing that if one of the Parties decides to call an expert witness at the Hearing, the Hearing Date would have to be continued. The Petitioning Creditors sent this revised schedule to the Debtors, who made some amendments but notably did not object to the January 26 production deadline. The Petitioning Creditors incorporated the Debtors' modifications into an amended scheduling order and sent it to the Debtors, asking them to confirm that the schedule was acceptable; however, the Debtors refused to provide confirmation.

10. On January 21, 2011, the Debtors requested additional time to complete their document production, this time asking for an extension until February 4, 2011. For reasons consistent with those outlined herein, the Petitioning Creditors decided not to agree to

amendments to the schedule that would result in moving the Hearing Date.

11. To date, counsel for the Petitioning Creditors have collected materials from each of the four Petitioning Creditors. These materials, which include hard-copy documents and electronic files, were maintained on multiple servers and were made available to the Petitioning Creditors in various formats. Attorneys for the Petitioning Creditors have reviewed over 50,000 documents and produced 4,696 of those documents, or more than 27,000 pages. The Debtors on the other hand have produced only 1,327 documents, including dozens of placeholders that are not actually documents at all, for a total of 5,633 pages.

ARGUMENT

12. There can be no dispute that the Debtors in these Cases are guarantors of the Vitro Notes and that, as guarantors, they are liable, subject to certain limitations, for the principal and interest owed under the Notes. There can also be no dispute that Vitro S.A.B. de C.V. ("Vitro"), the primary obligor on the Vitro Notes, is insolvent and cannot pay the debt it owes in respect of the Notes. In fact, Vitro is currently in involuntary bankruptcy proceedings in Mexico. Thus, whether today or some time in the future, the Debtors must be held to account for their liabilities as guarantors of the Notes.

13. Given that the Bankruptcy Code's automatic stay places no restrictions on the Debtors' ability to operate their businesses and does not subject them to court supervision—but instead only constrains the Debtors' creditors—the Debtors' incentives to delay a hearing in the Cases are self-evident. This fact alone calls into question their reasons for requesting the extension, but there are ample other reasons to doubt the claims made by the Debtors in the Motion.

14. For example, the Debtors' contention that having to collect and review approximately 50,000 documents provides "good cause" for the requested relief is baseless. It has been more than a month since the requests for production were served on the Debtors, and the law firms (plural) representing the Debtors have hundreds of lawyers between them. On just this case, the law firm of Milbank, Tweed, Hadley and McCloy is already making use of attorneys in its Los Angeles, New York, and Washington, D.C. offices. Two firms of this size and sophistication should be able to find the resources needed to complete their production in the time allotted. Indeed, the Petitioning Creditors have reviewed an equal number of documents for their production and were prepared to comply with the Agreed Scheduling Order as amended by the Parties. Because the Petitioning Creditors have worked diligently to produce documents according to the Agreed Scheduling Order, the Debtors should be held to the same standard. The fact that some of the documents are in Spanish does not alter this conclusion. From the outset, it should have been apparent to the Debtors and their counsel that there would be a need for Spanish-speaking attorneys given the Debtors' affiliation with Vitro, a Mexican company. That said, the Debtors and their counsel should be able to marshal the resources to address the issue. For example, the firm of Fulbright & Jaworski lists on its website more than 40 attorneys who speak Spanish in its Dallas, Houston and Austin offices.

15. The Debtors' complaint that the Petitioning Creditors' Requests were "broad" is unavailing. The Debtors negotiated, and agreed to, the search terms used to identify documents responsive to those requests, and counsel for the Petitioning Creditors has always been available to discuss narrowing the search terms. In fact, the Petitioning Creditors have agreed once to narrow search terms at the Debtors' request. Moreover, the Petitioning Creditors

agreed to search the documents of its four clients for every mention of the word "Vitro" dating back more than two years, a search that could scarcely be broader.

16. The request for an extension is all the more concerning because of the Debtors' ability to delay further the Hearing by designating an expert witness. The Debtors' Amended Agreed Scheduling Order provides that the Parties have until February 14, 2011 to "provide notice to the other parties of their intent to provide affirmative expert reports or call expert witnesses." Because the amended order does not provide time for expert discovery, that time would have to be added into the schedule; thus, designating an expert witness could result in additional delay of three or four weeks before the Hearing Date.

CONCLUSION

For the foregoing reasons, the Motion should be denied, and the Debtors should be ordered to produce the responsive documents no later than Monday, January 31, 2011, or be subject to sanctions by the Court.

Dated: Fort Worth, Texas
January 27, 2011

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ATTORNEYS FOR THE PETITIONING CREDITORS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via ECF electronic Notice, if available, and upon the parties listed below via email, on January 27, 2011.

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